

REMARKS

This application has been reviewed in view of the Office Action mailed on September 5, 2007. Claims 1, 2 and 5-9 are pending in the application with claim 1 being in independent form. No new matter is believed to be introduced by the amendments.

Claims 1, 8, and 9 were rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,954,259 to Viola et al. (hereinafter “Viola”) in view of U.S. Patent No 3,859,996 to Mizzy et al. (hereinafter “Mizzy”). Viola, taken in any proper combination with Mizzy, fails to disclose or suggest the surgical stapler of claim 1. Specifically, Viola in view of Mizzy fails to disclose or suggest a surgical stapler including, *inter alia*, a clamping handle configured to actuate the clamping of tissue and a pressure sensitive trigger configured to regulate the deformation of surgical fasteners.

Viola discloses a surgical apparatus for applying surgical fasteners to body tissue. The surgical apparatus “is configured to clamp body tissue, apply a plurality of surgical fasteners to the body tissue, and form an incision in the fastened body tissue during a laparoscopic surgical procedure.” (Column 4, lines 10-14). Specifically, the surgical apparatus operates as described in the specification at column 7, line 58 through column 8, line 8, with reference to FIGS. 9 and 10 (reproduced herebelow).

When body tissue is captured between anvil member 86 and retainer cartridge 60, trigger 44 is depressed to actuate motor assembly 22, and thereby cause gear set 24 to transfer rotational motion to drive shaft 42, which, in turn, transfers rotational motion to axial drive screw 78 through couplings 76 and 140. At such a time, follower housing 95 translates in a longitudinal direction, driving actuation beam 100 distally. As actuation beam 100 translates distally, cam roller 104 progressively moves anvil member 86 from the normally biased open position

shown in FIG. 9, to the closed clamped position illustrated in FIG. 10.

Concomitantly, actuation sled 120 is driven from the proximal position illustrated in FIG. 9, through retention cartridge 90, to the distal-most position shown in FIG. 10, sequentially driving surgical fasteners through body tissue 160. (Emphasis added).

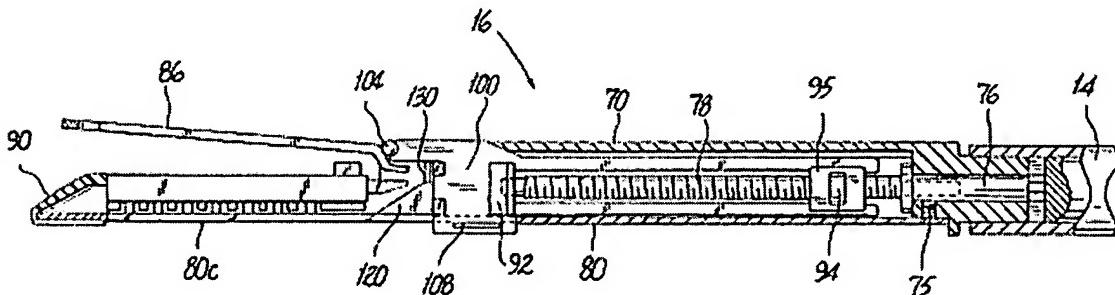


Fig. 9

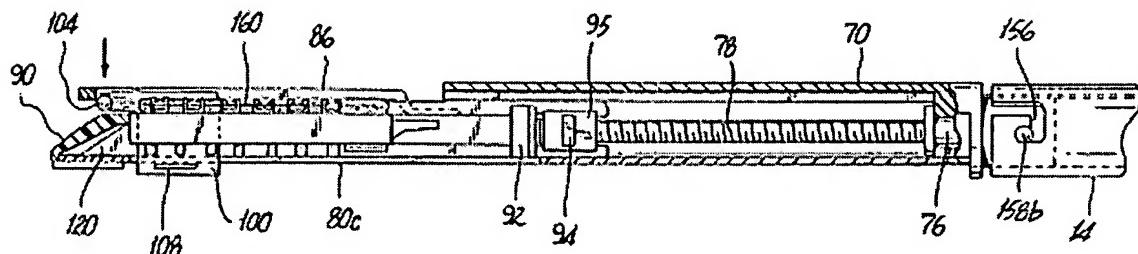


Fig. 10

Thus, Viola discloses an apparatus having a single trigger configured to “concomitantly” actuate the clamping of tissue and the deformation of the surgical fasteners. In this manner, a surgeon is unable to actuate the clamping of tissue prior to and/or independent of the actuation causing the deformation of the surgical fasteners. A surgeon is thus prevented from ensuring that the tissue being stapled is properly positioned prior to being stapled. Unclamping the tissue once the apparatus has been actuated cannot retract the surgical fasteners that were deployed upon actuation.

Combining the pressure sensitive trigger of Mizzy with the apparatus of Viola would only provide a surgical apparatus with a “pressure sensitive” trigger. Combining

Mizzy with Viola does not provide a surgical stapler having a “clamping handle” for actuating the clamping of tissue and “pressure sensitive trigger” for regulating the deformation of the surgical fasteners, as recited in claim 1. Therefore, Applicant respectfully submits that claim 1, is not anticipated or fairly suggested by Viola in view of Mizzy, and is in condition for allowance. Since claims 8 and 9 depend from claim 1, it is respectfully submitted that, for at least the this reason, claims 8 and 9 are also in condition for allowance.

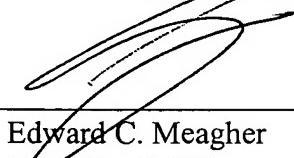
Claims 2 and 5-7 were rejected under 35 USC § 103(a) as being anticipated by Viola in view of Mizzy and in further view of U.S. Patent Application No. 2002/0096550 to Green et al (hereinafter “Green”). As noted above, Viola in view of Mizzy does not disclose or suggest all of the features of claim 1, the base claim from which claims 2 and 5-7 depend. Green does not provide any further disclosure or suggestion that, in combination with Viola in view of Mizzy, would suggest the surgical stapler of claim 1. Since, neither Viola in view of Mizzy, nor Viola in view of Mizzy in further view of Green, suggest the elements of claim 1, and claims 2 and 5-7 depend from claim 1, for at least the reasons presented above, it is respectfully submitted that the rejection of the Office Action has been overcome and that claims 2 and 5-7 are in condition for allowance.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely Claims 1, 2, and 5-9, are believed to be in condition for allowance.

Appl. No. 10/528,851
Amdt. Dated December 4, 2007
Reply to Office Action of September 5, 2007

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicant's undersigned attorney at the Examiner's convenience.

Respectfully submitted,



Edward C. Meagher
Reg. No. 41,189
Attorney for Applicant

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road
Suite 225
Melville, New York 11747
Tel.: (631) 501-5700
Fax: (631) 501-3526

Mailing Address:
Chief Patent Counsel
Covidien
60 Middletown Avenue
North Haven, CT 06473